

House Engrossed

ASRS; contribution prepayment

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2008

AN ACT

AMENDING SECTION 38-737, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-737, Arizona Revised Statutes, is amended to
3 read:

4 38-737. Employer contributions; prepayment; definitions

5 A. Employer contributions shall be a percentage of compensation of
6 all employees of the employers who meet the eligibility requirements
7 contained in this article, excluding the compensation of those employees
8 who are members of the defined contribution program administered by ASRS,
9 as determined by the ASRS actuary pursuant to this section for June 30 of
10 the fiscal year immediately preceding the preceding fiscal year, except
11 that beginning with fiscal year 2001-2002 the contribution rate shall not
12 be less than two percent of compensation of all employees of the
13 employers. Beginning July 1, 2011 through June 29, 2016, the total
14 employer contribution shall be determined on the projected unit credit
15 method. Beginning June 30, 2016, the board shall determine the actuarial
16 cost method pursuant to section 38-714. The total employer contributions
17 shall be equal to the employer normal cost plus the amount required to
18 amortize the past service funding requirement over a period that is
19 determined by the board and consistent with generally accepted actuarial
20 standards.

21 B. All contributions made by the employer and allocated to the fund
22 established by section 38-712 are irrevocable and shall be used as
23 benefits under this article or to pay expenses of ASRS.

24 C. The required employer contributions shall be determined on an
25 annual basis by an actuary who is selected by the board and who is a
26 fellow of the society of actuaries. ASRS shall provide by December 1 of
27 each fiscal year to the governor, the speaker of the house of
28 representatives and the president of the senate the contribution rate for
29 the ensuing fiscal year and the unfunded actuarial accrued liability, the
30 funded status based on the actuarial value of assets and market value of
31 assets and the annualized rate of return and the ten-year rate of return
32 as of June 30 of the prior fiscal year.

33 D. Notwithstanding any other provision of this article, an employer
34 may prepay the employer's 401(a) pension contributions directly to ASRS
35 according to a written agreement between the employer and ASRS as follows:

36 1. 401(a) pension contributions that the employer prepays according
37 to this subsection may be deposited, as determined by the employer and
38 managed by ASRS, directly in either the ASRS trust fund established by
39 section 38-712 or a section 115 trust.

40 2. ASRS shall determine the following options available to the
41 employer:

42 (a) The amortization time periods.

43 (b) The frequency and dates that prepayments can be made.

44 (c) The maximum and minimum amounts of 401(a) pension contributions
45 that the employer can prepay.

1 (d) Any other options or obligations that the employer may have
2 when entering into this written agreement.

3 3. The earnings accrual rate shall be the ASRS total 401(a) pension
4 fund rate of return, ~~OR THE ACTUAL RATE OF RETURN OF A SHORT-TERM~~
5 ~~INVESTMENT THROUGH ASRS, AS REQUESTED BY THE EMPLOYER AND AGREED TO BY~~
6 ~~ASRS.~~

7 4. The 401(a) pension contributions the employer prepays and the
8 accrued earnings shall be managed at the discretion of ASRS subject to
9 section 38-718.

10 5. 401(a) pension contributions that the employer prepays and
11 accrued earnings may be used solely to reduce the employer's future 401(a)
12 pension contributions as required from the employer pursuant to this
13 section and section 38-735.

14 6. The employer shall determine when to use the 401(a) pension
15 contributions the employer prepays and the accrued earnings from those
16 401(a) pension contributions.

17 7. ASRS shall provide the employer an annual statement of 401(a)
18 pension contributions the employer prepaid and the accrued earnings.

19 8. Notwithstanding any other provision of this subsection, an
20 employer may not prepay 401(a) pension contributions according to this
21 subsection either:

22 (a) In an amount greater than the employer's net pension liability
23 as reflected by ASRS in its most recent applicable governmental accounting
24 standards report.

25 (b) After the total of the unamortized prepaid 401(a) pension
26 contributions and the accrued earnings is equal to or greater than the
27 employer's net pension liability as reflected by ASRS in its most recent
28 applicable governmental accounting standards report.

29 ~~9. Notwithstanding any other provision of this subsection, the~~
30 ~~employer shall elect an amortization schedule by written agreement with~~
31 ~~ASRS, and the amortization period shall begin in the fiscal year following~~
32 ~~the occurrence of the earlier of:~~

33 ~~(a) The employer's net pension liability is zero or less as~~
34 ~~reflected by ASRS in its most recent applicable governmental accounting~~
35 ~~standards report.~~

36 ~~(b) The total of the unamortized prepaid 401(a) pension~~
37 ~~contributions and the accrued earnings is equal to or greater than the~~
38 ~~employer's net pension liability as reflected by ASRS in its most recent~~
39 ~~applicable governmental accounting standards report.~~

40 ~~10.~~ 9. After an employer elects amortization terms, ASRS shall
41 provide the employer an amortization schedule annually that is current and
42 based on the employer's election.

43 ~~11.~~ 10. If ASRS determines to no longer offer the option of
44 prepaying the employer's 401(a) pension contributions directly to ASRS,
45 any 401(a) pension contributions the employer prepays and the accrued

1 earnings remaining on account shall be used for future obligations
2 according to the written agreement between the employer and ASRS.

3 ~~12.~~ 11. Assets transferred in or out of or held in the ASRS trust
4 fund established by section 38-712, or a section 115 trust, and the
5 accrued earnings are exempt from state, county and municipal taxes.

6 ~~13.~~ 12. The legislature intends that the accrued earnings not be
7 subject to federal income tax. ASRS may adopt additional rules, policies
8 and procedures as ASRS deems necessary or appropriate to fulfill the
9 legislature's intent that the accrued earnings not be subject to federal
10 income tax.

11 ~~14.~~ 13. If ASRS receives notification from the United States
12 internal revenue service that this subsection or any portion of this
13 subsection will jeopardize the tax-exempt status of the 401(a) pension
14 contributions the employer prepays according to this subsection and the
15 accrued earnings, the portion of this subsection that will cause the
16 disqualification does not apply.

17 E. IN ADDITION TO THE REQUIREMENTS OF SUBSECTION D OF THIS SECTION,
18 ANY PREPAYMENT AGREEMENT MADE BETWEEN ASRS AND THIS STATE OR ANY STATE
19 AGENCY IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

20 1. ANY PREPAYMENT AMOUNTS DEPOSITED WITH ASRS MUST BE FROM AN
21 APPROPRIATION SPECIFICALLY FOR THAT PURPOSE THAT IS PASSED BY THE
22 LEGISLATURE AND SIGNED BY THE GOVERNOR.

23 2. ANY PREPAYMENT AMOUNTS OR ACCRUED EARNINGS USED TO REDUCE THE
24 EMPLOYER'S 401(a) PENSION CONTRIBUTIONS MUST BE AUTHORIZED FOR A SPECIFIC
25 FISCAL YEAR BY LEGISLATION THAT IS PASSED BY THE LEGISLATURE AND SIGNED BY
26 THE GOVERNOR.

27 ~~E.~~ F. For the purposes of this section:

28 1. "401(a) pension contributions" means the portion of an
29 employer's pension contribution that is specific to the retirement program
30 established under this article and qualified under section 401(a) of the
31 internal revenue code.

32 2. "Section 115 trust" means a trust whose income is exempt from
33 gross income pursuant to section 115 of the internal revenue code for
34 essential government functions integral to this state and its political
35 subdivisions.